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6 LINDA ARVISO, et al.,
7 Plaintiffs,
8 v.
9 SMARTPAY LEASING, INC.,
10 Defendant.
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Case No. 15-cv-04087-TEH

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17 **ORDER DENYING DEFENDANT'S
MOTION TO STAY DISCOVERY**

18 This matter came before the Court on February 29, 2016, for a hearing on
19 Defendant's motion to stay discovery. Having carefully considered the parties' written
20 and oral arguments, the Court now DENIES Defendant's motion and ORDERS that
21 limited discovery proceed for the reasons set forth below.

22
23 **BACKGROUND**

24 Plaintiff Linda Arviso ("Plaintiff") filed her Amended Class Action Complaint on
25 October 27, 2015, alleging violations of the federal Telephone Consumer Protection Act
26 ("TCPA") and California's Rosenthal Fair Debt Collection Practices Act ("Rosenthal
Act"). Amended Class Action Complaint ("Am. Compl.") (Docket No. 10). Plaintiff
alleges that Defendant contacted members of the putative class using an "automatic
telephone dialing system," or "autodialer," without their prior express consent, in violation
of the TCPA. *Id.* ¶¶ 1-2. Furthermore, Plaintiff alleges that Defendant's "campaign of
harassment in an attempt to coerce payment of consumer debts" constituted abusive,
deceptive and unfair practices in violation of the Rosenthal Act. *Id.* ¶ 3.

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1 Defendant Smartpay Leasing (“Defendant,” or “Smartpay”) is a former business
2 line of Billfloat, Inc. (“Billfloat”), and operated as Billfloat’s subsidiary during the relevant
3 time period alleged in the Amended Complaint. Motion to Stay Discovery (“Mot.”) at 3
4 n.1 (Docket No. 30). Defendant contends that Plaintiff entered into a written agreement
5 with Billfloat for the lease-purchase of a cell phone, and that because the agreement
6 contained an arbitration clause, Plaintiff’s claims must be resolved in arbitration.
7 Defendant filed a motion to compel arbitration on December 28, 2015, accompanied by a
8 declaration from Alan Crystal, Billfloat’s Vice President of Finance.¹

9 On December 30, 2015, Plaintiff’s counsel emailed a Deposition Notice to
10 Defendant’s counsel, seeking to depose Mr. Crystal. Mot. at 3. On January 5, 2016,
11 Plaintiff emailed a set of interrogatories and document production requests to Defendant’s
12 counsel. *Id.* at 3-4. On January 19, 2016, Defendant filed the instant motion to stay
13 discovery while the motion to compel arbitration is pending. On January 29, 2016, the
14 Court, pursuant to the parties’ stipulation, vacated the arbitration motion’s hearing pending
15 resolution of the instant discovery motion. (Docket No. 32.)

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17 **LEGAL STANDARD**

18 District courts have the inherent power to stay discovery as a matter of controlling
19 their own docket and calendar. *Little v. Seattle*, 863 F.2d 681, 685 (9th Cir. 1988).
20 Furthermore, the Federal Arbitration Act (“FAA”) mandates stays of proceedings in
21 district courts when an issue in the proceeding is arbitrable. 9 U.S.C. § 3. Indeed, it is a
22 common practice for district courts to stay discovery while a motion to compel arbitration
23 is pending. *See, e.g., Ross v. Bank of Am., N.A.*, 2006 WL 36909, at *1 (S.D.N.Y. 2006);
24 *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Coors*, 357 F. Supp. 2d 1277, 1281 (D.
25 Colo. 2004); *Intertec Contracting v. Turner Steiner Int’l*, S.A., No. 98-CV-9116, 2001 WL
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27 ¹ Both parties refer extensively to the contents of the motion to compel arbitration as
28 well as the Crystal Declaration; thus, the Court may consider these documents as
incorporated by reference. *See U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

1 812224, at *7 (S.D.N.Y. 2001).

2 While the FAA allows only limited discovery in connection with a motion to
3 compel arbitration, discovery may be permitted “if the making of the arbitration agreement
4 or the failure, neglect, or refusal to perform the same be in issue.” *Simula, Inc. v. Autoliv,*
5 *Inc.*, 175 F.3d 716, 726 (9th Cir. 1999) (quoting 9 U.S.C. § 4).²

6 When considering whether to issue a stay, courts generally consider four factors: (1)
7 the likelihood of success on the merits of the moving party’s claim; (2) whether the
8 moving party will be irreparably injured absent a stay; (3) whether issuance of a stay will
9 substantially injure the non-moving party; and (4) where the public interest lies. *Nken v.*
10 *Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776
11 (1987)).

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13 DISCUSSION

14 **I. Defendant Has Not Met its Burden of Showing that a Stay Is Warranted**

15 Because limited discovery as to the making of the arbitration agreement is permitted
16 under the FAA, the Court need not rely exhaustively on the stay factors. However, even
17 considering the factors, Defendant has not met its burden to show that a stay of discovery
18 is warranted.

19 First, as examined in more detail below, the Court finds that it will be unable to
20 assess the merits of the motion to compel arbitration absent some discovery as to contract
21 formation. The facts before the court do not “clearly demonstrate[]” that a contract existed
22 between Plaintiff and Defendant. Therefore, Defendant has not made a strong showing on
23 the first stay factor.

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26 ² Allowing discovery on the formation of the agreement logically follows when
27 considering the Court’s limited inquiry on a motion to compel arbitration. The Court
28 decides “(1) whether a valid agreement to arbitrate exists; and if it does, (2) whether the
agreement encompasses the dispute at issue.” *Cox v. Ocean View Hotel Corp.*, 533 F.3d
1114, 1119 (9th Cir. 2008) (quoting *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d
1126, 1131 (9th Cir. 2000)).

1 Turning to the second and third stay factors, Defendant contends that it will be
2 irreparably injured because “the advantages of arbitration – speed and economy – are lost
3 forever” when discovery is permitted. *Winig, v. Cingular Wireless, LLC*, 2006 WL
4 3201047, at *2 (N.D. Cal. Nov. 6, 2006). This statement is true; however, it is unclear
5 whether such injury would be irreparable, especially with the possibility of strictly limiting
6 discovery. *See Mayweather v. Newland*, 258 F.3d 930, 935 (9th Cir. 2001) (“Monetary
7 harm does not constitute irreparable injury.”). It is clear to the court, however, that forcing
8 Plaintiff to submit her claims to arbitration when she did not enter into an arbitration
9 agreement would constitute irreparable injury by denying her a day in court.

10 Finally, Defendant makes no compelling argument as to the public interest, besides
11 the advancement of judicial economy. Judicial economy does not outweigh a litigant’s
12 right to her day in court; therefore, Defendant has not made a strong showing on the fourth
13 and final stay factor, and has not demonstrated that a stay is warranted.

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15 **II. Whether a Contract Was Formed Is a Disputed Issue in this Case**

16 Plaintiff contends in her Amended Complaint that she “purchased the cell phone
17 using cash.” Am. Compl. ¶ 16. Mr. Crystal’s declaration states that Plaintiff “completed
18 an electronic application for a lease-purchase agreement to obtain a Kyocera Hydro
19 cellular phone via Billfloat’s website.” Crystal Decl. ¶ 20. Plaintiff alleges that she “has
20 never seen or visited Defendant’s website.” Am. Compl. ¶ 17. Furthermore, the purported
21 contract does not contain Plaintiff’s signature, but instead was “signed” by someone
22 checking a box. Plaintiff contends that “without discovery, Plaintiff has no opportunity to
23 examine whether Defendant’s employees check this box for prospective customers.”
24 Finally, Plaintiff disputes many of the assertions in Mr. Crystal’s declaration, and contends
25 that she will be “grossly prejudiced” if she is unable to question Mr. Crystal concerning the
26 unadorned assertions in his declaration.” Opp’n at 4.

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1 Considering the parties' briefing, the Court finds that there are factual disputes as to
2 the formation of the purported contract such that contract formation is at issue in this case.
3 Furthermore, as a consumer, Plaintiff is in a position where she does not have the majority
4 of the information she needs to support her contention that she never signed an agreement,
5 such as information about Defendant's application and approval processes, Defendant's
6 methods of receiving customer information, and the existence of any receipts or records of
7 cash sales. Additionally, many of the assertions in Mr. Crystal's declaration concern
8 contract formation. *See* Crystal Decl. ¶¶ 19-29. Plaintiff should be permitted to depose
9 Mr. Crystal about to his statements regarding formation of the purported contract, but
10 should not be permitted to take a full-length deposition with no subject matter restrictions
11 that might include questions about the merits of the underlying claims.

12 If the Court were to grant Defendant's motion to stay discovery, the Court would
13 then turn to the motion to compel arbitration, and its first inquiry would be whether a valid
14 arbitration agreement exists. *Cox*, 533 F.3d at 1119. Whether a valid arbitration
15 agreement exists depends on contract concepts and defenses, and thus the court would
16 have to consider whether a contract was actually formed. 9 U.S.C. § 2. Solely considering
17 the facts before the Court at this time, the Court would not be able to determine whether,
18 for example, there was an offer, acceptance and consideration; and thus would be unable to
19 determine with certainty whether a valid arbitration agreement exists. Therefore, the Court
20 will permit some discovery as to the disputes identified above. *See, e.g., Hoffman v.*
21 *Citibank (South Dakota), N.A.*, 546 F.3d 1078, 1085 (9th Cir. 2008) (remanding to district
22 court for additional fact finding regarding validity of contract).

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24 **III. Plaintiff May Conduct Discovery That Is Limited to Contract Formation**

25 This ruling should not be construed to allow Plaintiff to embark on a fishing
26 expedition. The Court reiterates that there will be no merits discovery. For example, there
27 is no reason for Plaintiff to request phone records as to all 230 alleged autodialer-placed
28 phone calls. Such an inquiry would go to whether Defendant engaged in the harassing

1 behavior alleged by the underlying claims. Furthermore, Plaintiff will not be allowed to
2 conduct discovery related to any other customers.

3 At oral argument, Plaintiff's counsel contended that Request for Production Nos. 1-
4 and Interrogatory Nos. 2 and 3 relate to a phone call that Defendants contend ratified the
5 agreement between Plaintiff and Defendant. Plaintiff's counsel conceded that he did not
6 find any such phone call indicative of contract formation, but stated that he propounded the
7 discovery requests simply because Defendant relied upon the phone call in its motion to
8 compel arbitration. Plaintiff's counsel stated that if the Court found that such purported
9 ratification is not relevant to the issue of contract formation, he would withdraw those
10 requests. As stated at oral argument, the Court finds that any such ratification is not
11 relevant to contract formation; thus, there shall be no discovery related to the phone call.

12 Furthermore, the Court will allow interrogatories and/or requests for production
13 relating to Defendant's relationship with MetroPCS, but only as it relates to information
14 Defendant may have received from MetroPCS about Plaintiff, not generally as to the
15 relationship between Defendant and MetroPCS. Thus, as currently phrased, Request for
16 Production No. 8 and Interrogatory Nos. 4 and 5 are overbroad.

17 At oral argument, the Court entreated Plaintiff's counsel to begin drafting new
18 requests for production, interrogatories, and a notice of deposition that are tailored to the
19 narrow issue of contract formation. Plaintiff shall do so using the above examples and this
20 Order for guidance. **IT IS HEREBY ORDERED** that Plaintiff shall serve the new
21 discovery requests on Defendant no later than **March 24, 2016**.

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23 CONCLUSION

24 For the reasons discussed above, the Court hereby DENIES Defendant's motion to
25 stay discovery. Discovery shall proceed, but shall be strictly limited to the issue of
26 contract formation.

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1 After limited discovery pursuant to this Order is completed, the parties shall meet
2 and confer regarding a proposed briefing schedule for Defendant's motion to compel
3 arbitration, as well as proposed hearing dates. The parties shall file a stipulation, if
4 possible, no later than 10 days after completion of the discovery setting forth a proposed
5 briefing schedule and hearing date. If the parties are unable to agree upon dates, they shall
6 file separately their proposed dates. The briefing schedule and hearing dates shall comply
7 with the Civil Local Rules.

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9 **IT IS SO ORDERED.**

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11 Dated: 03/03/16

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THELTON E. HENDERSON
United States District Judge